IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 343 (M/B) of 2006

Bajpur Cooperative Sugar Factory Ltd.,
Bajpur, Distt. U.S. Nagar through its G.M./Secretary

..... **Petitioner**

Vs.

1. State of Uttaranchal through Secretary Ministry of Sugar Industries & Cane Development, Dehradun
2. Cane Commissioner of Uttaranchal Kashipur, District Udham Singh Nagar
3. Sahkari Ganna Vikas Samiti Ltd. Bajpur, Distt. U.S. Nagar, through its Secretary
4. Cane Development Council, Bajpur, U.S. Nagar

....Respondents

Sri R.K. Raizada, ld. counsel for the petitioner
Sri K.D. Upadhyaya, ld. standing counsel for State
Sri Manav Sharma, ld. counsel for Respondent No.3

Dated: August 11, 2006

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma,J.

By means of this writ petition, the petitioner has challenged the validity and legality of Rule 49 of the U.P. Sugar Cane (Regulation of Supply & Purchase) Rules, 1954 (***hereinafter will be referred to as the Rules***) on the ground that by this rule, the cane commission has been fixed on the basis of the sugar cane while Section 18 of the U.P. Sugar Cane (Regulation of Supply & Purchase) Act, 1953 provides the commission to be paid for every one maund of the cane purchased, therefore, Rule 49 of the Rules suffers from excessive delegation and is liable to be quashed.

2. The petitioner Bajpur Cooperative Sugar Factory Ltd. is a central cooperative society and manufactures the sugar by vacuum pan process and for that purpose, the factory purchases the sugar cane from the reserved area or assigned area to the sugar factory under Section 13 and 14 of the U.P. Sugar Cane (Regulation of Supply & Purchase) Act, 1953 ***(hereinafter will be referred to as the Act)***. The sugar factory has to pay commission according to Section 18 of the Act. For convenience, Section 18 of the Act is reproduced as under:-

> ***Commision on purchase of cane*** *–(1) There shall be paid by the (occupier of a factory or a Gur, Rab or Khandsari Sugar Manufacturing Until a commission for every one maund of cane purchased by the (factory or a Gur, Rab or Khandsari Sugar Manufacturing Until-*
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> *(a) ' Where the purchase is made through a Cane growers' Cooperative Society, the commission shall be payable to the Cane growers' Cooperative Society and the Council in such proportion as the State Government may declare, so, however, that the share payable to the Council shall not exceed 50 percent; and*
> *(b) where the purchase is made directly from the cane-grower, the commission shall be payable to the Council;*
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> *Provided that different rates of commission may be prescribed for a factory and for a Gur, Rab or Khandsari, Sugar Manufacturing Unit:*
> *Provided further that the State Government may be notification in the official Gazette remit in whole in part such commission in respect of a factory or a Gur, Rab or Khandsari Sugar Manufacturing Unit for a limited purpose specified in the notification.*
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> *(2) The Commission payable under clauses (a) and (b) of sub-section (1) shall be at such rates as may be prescribed: provided, however, that the rate fixed under clause (b) shall not exceed the rate at which the commission may be payable to the council under clause (a).*

(3) *The provisions relating to payment, interest and recovery including recovery as arrears of land revenue, applicable to price of cane shall mutatis mutandis apply to payment and recovery of commission under Sub-Section (1).*

3. Sub-Section (1) of Section 18 of the Act imposes the commission on the occupier of the factory for every month on the cane purchased by the factory to be paid to the Cooperative Cane Growers Cooperative Society. The proviso appended to this section provides that **different rates of commission may be prescribed for factory and for a Gur, Rab or Khandsari, Sugar Manufacturing Unit.** The second proviso provides that gazette remit in whole or in part such commission in respect of a factory or a Gur, Rab or Khandsari Sugar Manufacturing Unit for a limited purpose specified in the notification. Therefore, by these provisos, the State Government has been given ample power to issue notification in respect of cane commission prescribing the rate of cane commission to be paid.

4. In sub-clause (1) of Section 18 of the Act, it has only provided that the commission shall be paid for every one maund of sugar cane purchased. What would be the rate of commission, it has not been mentioned in sub-section (1) of Section 18 of the Act and that has to be done by the State Government as it may prescribe under the sub-section (3) of Section 18 of the Act. Here the word 'prescribed means prescribed under the Rules. Under Rule 49 of the Rules, the Cane Commission has been fixed at the rate of 3% of minimum statutory cane price. The minimum statutory cane price. The minimum statutory cane price is fixed by the Government of India in exercise of powers conferred by clause (3) of Sugar Cane (Control) Order, 1966. For the year 2002-03 on 12.12.2002, the

Government of India vide its notification dated 12.12.2002 fixed the minimum cane price to be Rs.64.50 per quintal in both the crushing seasons. A perusal of this notifications shows that the minimum cane price has been fixed per quintal, therefore, reading this notification with this Rule, it comes out that 3% of the cane price of one quintal is the cane commission. Therefore, the cane commission is fixed on the quintal i.e. on the quantity of the cane purchased by the Sugar Factory and not merely on the price because that notification clearly shows that minimum cane price in rupees per quintal.

5. Considering this view of the matter, we find that Rule 49 of the Rules does not suffer from any excessive delegation and is intra-vires. Learned counsel for the petitioner submitted that in case of "Ganga Sugar *Corpn. Vs. State of U.P. reported in AIR 1980 S.C. 286"* the Hon'ble Apex Court has held that the cane commission has to be fixed on the quantity of the cane purchased and not on the price for which the cane is purchased. At the instance of this case law, learned counsel for the petitioner submitted that once the legislatures have fixed the commission to be paid on the quantity of the sugar cane then the State Government in exercise of rule making powers cannot convert the commission payable on the basis of cane price.

6. The argument of learned counsel for the petitioner is misconceived. As we have stated above that according to Rule 49 of the Rules, though apparently it is being fixed per rate on the minimum statutory cane price fixed by the Government of India, however while reading the notification issued by the Govt. of India, it comes out that the minimum cane price fixed is per quintal, therefore, the rate fixed by the Government in terms of money 3% per quintal of the price of Sugar Cane.

Accordingly, the argument of learned counsel for the petitioner has no force and is rejected accordingly.

7. In the present case, the cane commission has been fixed under Rule 49 of the Rules which is 3% of the minimum statutory price. If one quintal i.e. 100 Kgs. sugar cane is purchased, then 3 kilograms shall be the commission and that commission is calculated on the basis of minimum statutory price and the price of three-quintal sugar at the rate of minimum price fixed and accordingly the commission comes to Rs. 1.935 or Rs. 1.94. Looking from this angle, the statutory price has been fixed according to Section 18 of the Act read with Rule 49 of the Rules.

8. For the reasons recorded above, the writ petition is dismissed. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang